

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

PAULA GONZALEZ,

Plaintiff,

v.

DELBERT ADAMS; GODFREY  
 TRUCKING, INC.; DOES I through V,  
 inclusive; and ROE BUSINESS ENTITIES I  
 through V, inclusive

Defendants.

Case No. 2:16-cv-00196-APG-VCF

**ORDER REMANDING CASE TO STATE  
 COURT**

(Dkt. #6)

Defendant Godfrey Trucking removed this case to federal court on February 1, 2016. In its Petition for Removal, Godfrey nakedly states that the amount in controversy exceeds \$75,000. (Dkt. #1 at 2:14-22.) Plaintiff Paula Gonzalez moves to remand this case to state court because her medical bills are approximately \$16,479.03, and she concedes that “she would likely not recover more than \$75,000 in this case.” (Dkt. #6 at 3:17-4:1.) I agree with the plaintiff and therefore remand this case to state court.

**ANALYSIS**

Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). “A federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Res.*, 873 F.2d 1221, 1225 (9th Cir. 1989). “Federal jurisdiction must be rejected if there is any doubt as to the right of removal in the first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir. 1979)). Thus, courts “strictly construe the removal statute against removal jurisdiction.” *Gaus*, 980 F.2d at 566. “The ‘strong presumption’ against removal jurisdiction means that the defendant always has the burden of establishing that removal is proper.” *Id.* Remand is required if the court lacks

1 subject matter jurisdiction. 28 U.S.C. §1447(c); *see also Aguon-Schulte v. Guam Election*  
2 *Comm’n*, 469 F.3d 1236, 1240 (9th Cir. 2006) (“remand may be ordered either for lack of subject  
3 matter jurisdiction or for ‘any defect’ in the removal procedure”).

4 “[I]n cases where a plaintiff’s state court complaint does not specify a particular amount  
5 of damages, the removing defendant bears the burden of establishing, by a preponderance of the  
6 evidence, that the amount in controversy exceeds [\$75,000]. Under this burden, the defendant  
7 must provide evidence establishing that it is ‘more likely than not’ that the amount in controversy  
8 exceeds that amount.” *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).  
9 Broad allegations that the jurisdictional amount is met, “although attempting to recite some  
10 ‘magical incantation,’ neither overcome[ ] the ‘strong presumption’ against removal jurisdiction,  
11 nor satisf[y][the defendant]’s burden of setting forth, in the removal petition itself, the underlying  
12 facts supporting its assertion that the amount in controversy exceeds” \$75,000. *Abrego Abrego v.*  
13 *The Dow Chem. Co.*, 443 F.3d 676, 689 (9th Cir. 2006) (emphasis omitted) (quoting *Gaus*, 980  
14 F.2d at 567); *see also Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)  
15 (“[R]emoval cannot be based simply upon conclusory allegations where the ad damnum is  
16 silent.”) (internal quotations and citation omitted).

17 “Where a complaint is unclear as to the total amount of damages sought, but alleges only  
18 upper or lower limits or types of damages, a district court is free in its preponderance-of-the-  
19 evidence analysis to make estimations of the amount of damages that could be obtained consistent  
20 with the vague wording of the complaint.” *Elliker v. Contractors Bonding & Ins. Co.*, 3:12-CV-  
21 00438-RCJ-WGC, 2013 WL 757621, at \*1 (D. Nev. Feb. 27, 2013) (citing *Guglielmino v. McKee*  
22 *Foods Corp.*, 506 F.3d 696, 700–01 (9th Cir. 2007)). In making such analyses, district courts can  
23 make “reasonable deductions, reasonable inferences, or other reasonable extrapolations from the  
24 pleadings to determine whether it is facially apparent that a case is removable,” and “may use  
25 their judicial experience and common sense in determining whether the case stated in a complaint  
26 meets federal jurisdictional requirements.” *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061-  
27 1062 (11th Cir. 2010) (internal quotations omitted); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 679  
28

1 (2009) (“Determining whether a complaint states a plausible claim for relief . . . requires the  
2 reviewing court to draw on its judicial experience and common sense”).

3 Here, there is more than considerable doubt that the amount in controversy exceeds this  
4 court’s jurisdictional threshold. Godfrey primarily relies on Gonzalez’s initial settlement demand  
5 of \$83,000. (Dkt. #8 at 5:5-6.) “A settlement letter is relevant evidence of the amount in  
6 controversy if it appears to reflect a reasonable estimate of the plaintiff’s claim.” *Cohn v.*  
7 *Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002). Unlike in *Cohn*, Gonzalez admits that her  
8 demand was inflated for purposes of settlement negotiations, and that “she would likely not  
9 recover more than \$75,000 in this case.” (Dkt. #6 at 3:17-4:1; Dkt. #9 at 3:1-16.) Her medical  
10 bills total approximately \$16,479.03 and she is not seeking punitive damages. (Dkt. #6 at 3:17-  
11 4:1.)

12 Based on my judicial, legal, and practical experience and common sense, I find it highly  
13 unlikely that the amount in controversy exceeds \$75,000. In addition to awarding full recovery of  
14 her medical bills, a jury would have to award additional damages in excess of \$58,000. The  
15 underlying allegations do not suggest such an award. Thus, Godfrey Trucking has not met its  
16 burden of establishing by a preponderance of the evidence that the amount in controversy exceeds  
17 \$75,000. *Roe*, 613 F.3d at 1061-1062; *Iqbal*, 556 U.S. at 679. Consequently, I remand this action  
18 to state court.

### 19 CONCLUSION

20 IT IS THEREFORE ORDERED the plaintiff’s motion (**Dkt. #6**) is **GRANTED** and this  
21 case is remanded to the state court from which it was removed for all further proceedings. The  
22 Clerk of the Court is instructed to close this case.

23 Dated: March 21, 2016.



24  
25 ANDREW P. GORDON  
26 UNITED STATES DISTRICT JUDGE  
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